

United States District Court  
Central District Of California  
Western Division

UNITED STATES OF AMERICA,  
Plaintiff/Respondent,  
v.  
LEWIS LEE SETTLES.  
Defendant/Petitioner.

CASE CASE NO. 2:17-CV-09314- ODW  
CR-08-00564- ODW

**ORDER DENYING 28 U.S.C.  
§2255 PETITION**

**I. INTRODUCTION**

On February 11, 2010 Defendant / Petitioner Settles was sentenced and committed to the Bureau of Prisons to be imprisoned for a term of 180 months. This term consists of 120 months on Counts 1, 2, and 4, which terms were to run concurrently and 60 months on Count 3, which term is to run consecutively to Counts 1, 2, and 4. He was also placed on Supervised Release for a term of eight (8) years,

1 which consists of eight (8) years on Count 1, six (6) years on Count 2, five (5) years on  
2 Count 3, and three (3) years on Count 4, all such terms to be served concurrently.

3 On October 20, 2017 Settles filed a Motion to Vacate, Set Aside or Correct  
4 Sentence. The argument for resentencing is grounded on the Supreme Court decision  
5 in *Dean v. United States*, \_\_\_ U.S. \_\_\_, 137 S. Ct. 1170 (2017). As discussed below, *Dean*  
6 provides no basis for resentencing.

## 7 8 **II. FACTUAL BACKGROUND**

9 In March and April 2008 a confidential informant working with a DEA/LAPD  
10 joint task force, made or attempted to make five controlled buys of crack cocaine from  
11 Petitioner. After the last buy Petitioner was arrested at the residence out of which he was  
12 trafficking the narcotics. Inside the residence officers found .31 grams of cocaine base,  
13 cash, digital scale, a shotgun, a .380 automatic and a .357 revolver as well as ammunition  
14 for the weapons.

15 He was charged in a four-count indictment with two counts of Distribution of  
16 cocaine base, 7.89 grams and 1.52 grams respectively; possession of firearms in  
17 furtherance of a drug trafficking crime; one count of being a felon in possession of  
18 firearms. In a single count information it was alleged that he had sustained prior felony  
19 drug convictions.

20 He was released on bond under pretrial services supervision, with electronic  
21 monitoring. Four months later it appeared that he had tampered with the ankle bracelet  
22 and as a result was remanded.

23 Settles ultimately entered pleas of guilty to all four counts. Counts 1 and 2 for  
24 distribution of a controlled substance in violation of 21 U.S.C. § 841(a)(1), the penalty  
25 for one with a prior felony drug offense is a statutory minimum sentence of 120 months.  
26 21 U.S.C. §841(b)(1)(B)(iv). As for Count 3, possession of a firearm in furtherance of  
27 a drug trafficking crime 18 U.S.C. §924(c)(1)(A)(I) a consecutive five year mandatory  
28 minimum sentence applies. Count 4, Felon in Possession of a firearm and ammunition,

1 18 U.S.C. § 922(g)(1) carries a base offense level of 20 and is essentially irrelevant to the  
2 calculation of the overall sentence.

3       Petitioner argues that under *Dean* he is potentially eligible for a reduced  
4 sentence. *Dean* also involved a § 924(c) count mandating a 5-year minimum term of  
5 imprisonment consecutive to the predicate charge. In *Dean*, the defendant was  
6 convicted of conspiracy to commit robbery, robbery, possessing a firearm as a convicted  
7 felon, and possessing and aiding and abetting the possession of a firearm in furtherance  
8 of a crime of violence. The Supreme Court held that nothing in the statute setting  
9 mandatory minimum sentences for using or possessing a firearm in connection with a  
10 violent or drug trafficking crime restricts the authority of sentencing courts to consider  
11 a sentence imposed under the mandatory minimum statute when calculating a just  
12 sentence for the predicate count. In other words, there is nothing to prevent the  
13 sentencing judge from considering the entire sentence, including any mandatory  
14 minimums. Whether the sentence for the predicate offense is one day or one decade,  
15 a district court does not violate the terms of § 924(c) so long as it imposes the  
16 mandatory minimum “in addition to” the sentence for the violent or drug trafficking  
17 crime. *Dean* at 1177.

18       Thus, the sentencing judge might conclude that a reasonable sentence is ten  
19 years. If there is a 10-year mandatory minimum which must be consecutive to a  
20 predicate offense, there is nothing to prohibit the sentencing judge from imposing a *de*  
21 *minimus* sentence for the predicate offense followed by the 10 year mandatory  
22 minimum. This assumes, however, that the predicate offense has no mandatory  
23 minimum. Here, the statutorily mandated sentence for counts 1 and 2 is 10 years. They  
24 may be ordered to run concurrently, but count 3, which carries a mandatory consecutive  
25 five year penalty, must be ordered to run consecutively to counts 1 and 2. Unlike the  
26 situation in *Dean*, there is no leeway here. There are two drug offenses which by statute  
27 require the imposition of ten year terms of imprisonment. The gun offense requires a  
28 consecutive five year term. Thus, there is nothing in *Dean*, or 18 U.S.C. §3553 that  
would permit a sentence of less than 180 months.

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2 **III. CONCLUSION**

3 The government's opposition raises a number of well-founded reasons why this  
4 motion should be denied. However, putting the technical reasons aside and viewing the  
5 motion on its merits, what Petitioner seeks simply is not possible. The sentence in this  
6 matter is driven by the confluence of mandatory minimums and mandatory consecutive  
7 terms of imprisonment. Dean did not have such restrictions and the sentencing judge had  
8 the authority and discretion to impose below guideline sentences on the predicate  
9 offenses. That situation does not exist in this case and for that reason, the Motion is  
10 **DENIED.**

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13 DATED: November 29, 2018

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16 Otis D. Wright, II  
17 United States District Judge  
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